

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2006-OLR-5

JANE KRUEGER SMITH,
Attorney at Law

Attorney Jane Krueger Smith (Krueger Smith), 49, of Oconto Falls, was the subject of three grievance investigations, which resulted in findings of professional misconduct, as summarized below:

GRIEVANCE ONE

On or about March 13, 2001, Krueger Smith was appointed by the State Public Defender's Office to provide appellate-level representation to D.S. following D.S.'s conviction in Shawano County of Child Enticement-Sexual Contact and 2nd Degree Sexual Assault-Use of Force. D.S. was sentenced to 20 years in a state prison.

By letter dated April 9, 2001, Krueger Smith notified D.S. that she had been appointed to represent him on potential appellate issues. Krueger Smith also informed D.S. that she had written to the County Clerk of Circuit Court for a copy of D.S.'s file and to trial counsel for trial counsel's insights and opinions as to any appellate issues. Krueger Smith further informed D.S. that the Public Defender's Office had requested that transcripts be prepared and sent to her. Finally, Krueger Smith stated she wanted to hear from D.S. as to the relevant issues concerning his case and after she had received and reviewed the requested materials, she would schedule an appointment with D.S. to discuss his case. Krueger Smith requested that D.S. write back as to his opinions relative to any appellate issues.

With a transmittal letter dated May 4, 2001, Krueger Smith filed on D.S.'s behalf in Shawano County Circuit Court a Motion For Withdrawal of Plea and Other Relief: Ineffective Assistance of Counsel. D.S. was not copied on the transmittal letter to the court and Krueger Smith did not otherwise provide D.S. with copies of the May 4, 2001 letter or the Motion.

By letter dated May 29, 2001 to the Wisconsin Court of Appeals, Krueger Smith enclosed for filing a Motion for Extension of Time for Postconviction Motions. According to the Motion, postconviction motions in D.S.'s matter were filed in Shawano County on May 8, 2001, but the Judge was unable to schedule a hearing on the Motions until July 13, 2001, which meant the sixty day deadline under Rule 809.30(2)(i) would expire before the July 13, 2001 hearing unless extended by the Court. The Motion further indicated that the July 13, 2001 hearing could not be held unless the Court of Appeals granted an extension. Krueger Smith did not copy D.S. on her May 29, 2001 correspondence or otherwise provide a copy of the Motion to D.S.

By letter dated June 15, 2001, Krueger Smith wrote the Shawano County Court to confirm that the Motion hearing originally scheduled for July 13, 2001 had been moved to July 11, 2001.

Krueger Smith states that at the time of the July 11, 2001 Motion hearing, the prosecution informed her that the local State Public Defender's Office had filed a motion to withdraw plea, counsel had testified, and the court denied the motion.

By letter dated July 19, 2001, Krueger Smith sent a copy of a January, 2001 transcript to D.S. Krueger Smith also outlined previous positions taken by D.S. and his former counsel. Krueger Smith further advised D.S. that if he wished to proceed to the Court of Appeals with a request to order the trial court to withdraw his plea, D.S. needed to be certain that his defense

would be provable. Krueger Smith requested D.S. consider carefully how he wanted to proceed and let her know as soon as possible.

According to Krueger Smith, the July 19, 2001 correspondence was returned by the post office for lack of postage. Krueger Smith asserted that when the correspondence and transcript were returned, she reopened it, put the contents in a new envelope and re-addressed it to D.S. with the additional postage due. Krueger Smith asserted the second package was not returned so she assumed D.S. received the materials.

By letter dated August 22, 2001, D.S. wrote Krueger Smith indicating that it had been a while since he had spoken to her about his case. D.S. also asserted Krueger Smith had not contacted him to let him know her plans and he had not yet received copies of his file. D.S. asked Krueger Smith to contact him as soon as possible.

By letter to Krueger Smith dated September 27, 2001, D.S. enclosed a copy of a transmittal letter and a *Pro Se* Motion he was filing with Shawano County requesting a copy of the Presentence Investigation Report. D.S. also indicated he had not heard from Krueger Smith regarding his case and again requested that she provide him with a copy of his file.

After receiving no reply from Krueger Smith, by letter dated November 18, 2001, D.S. contacted the Attorney Manager for the State Public Defender's Office (SPD attorney manager), indicating that Krueger Smith had failed to respond to his earlier letters requesting information concerning the status of his case.

By letter dated November 19, 2001, D.S. sent a copy of his November 18, 2001 correspondence to Krueger Smith and again requested that Krueger Smith communicate with him regarding his case.

Krueger Smith failed to respond to D.S.'s November 19, 2001 letter.

By letter dated December 4, 2001, the SPD attorney manager wrote to Krueger Smith notifying her that he had recently received a complaint from D.S. concerning her handling of his appeal. The SPD attorney manager enclosed a copy of D.S.'s recent correspondence and requested that Krueger Smith respond to D.S. within 10 days. The SPD attorney manager also requested that Krueger Smith forward a copy of any correspondence sent by Krueger Smith to D.S. to his office.

Krueger Smith did not communicate with D.S. regarding his case or otherwise reply to the SPD attorney manager's December 4, 2001 correspondence.

By letter dated January 28, 2002, the SPD attorney manager again notified Krueger Smith he had received another letter from D.S. concerning Krueger Smith's representation of him in his appeal. The SPD attorney manager stated that neither he nor D.S. had received any response to earlier letters. The SPD attorney manager asked Krueger Smith to write to D.S. to address his concerns, and to provide a copy of her letter to the SPD attorney manager.

Krueger Smith did not correspond with D.S. concerning the status of his appeal, nor did she reply to the SPD attorney manager's January 28, 2002 correspondence.

By letter dated April 15, 2002, D.S. contacted the SPD attorney manager informing him that he still had not heard anything from Krueger Smith regarding his case.

After hearing nothing from Krueger Smith, on April 26, 2002, D.S. wrote the Wisconsin Court of Appeals inquiring as to the status of his appeal.

By letter dated April 30, 2002, the Chief Deputy Clerk for the Wisconsin Court of Appeals (Deputy Clerk), informed D.S. that no notice of appeal had been filed in his case. The Deputy Clerk also indicated that according to court records, Krueger Smith had filed a motion for extension of time on D.S.'s behalf on May 31, 2001, and the court had granted an extension

of time for deciding the post-conviction motion until July 20, 2001. The Deputy Clerk further informed D.S. that pursuant to a phone call to the Shawano County Clerk's office, the motion had not been pursued by Krueger Smith. Finally, the Deputy Clerk informed D.S. that further action could not be taken on his case because an appeal was not pending.

By letter dated May 20, 2002, the SPD attorney manager informed Krueger Smith that he had not received a reply to his earlier letters, and D.S. still had not received a reply regarding the status of his appeal. The SPD attorney manager also indicated he had called Krueger Smith's office on May 7 and May 14, 2002, each time leaving a message with her secretary asking Krueger Smith to return the call, but he had received no response. The SPD attorney manager further advised if he did not hear from Krueger Smith within the next two weeks he would be referring the matter to the Office of Lawyer Regulation (OLR).

By letter dated October 21, 2002, Krueger Smith sent D.S. a copy of a Motion to Extend Time to File a Notice of Appeal, which had purportedly been filed with the court by Krueger Smith on August 19, 2002, but denied. Krueger Smith also informed D.S. that on July 21, 2001 she had sent him a copy of the transcript from the prior motion hearing with a letter suggesting that D.S. review it and let her know what he wanted to do, but that the package had been returned for lack of postage. Krueger Smith informed D.S. that she re-sent the package with sufficient postage on July 28, 2001, but she did not hear from D.S. and failed to follow-up with him. Krueger Smith acknowledged she received D.S.'s letters requesting a response but she had been so busy with trial cases she did not respond to D.S. as she should have. Finally, Krueger Smith informed D.S. that she would be sending his file back to the Public Defender's office suggesting they appoint new counsel for D.S. to look into filing a motion based upon ineffective assistance of appellate counsel.

On December 5, 2002, OLR received D.S.'s written grievance alleging that Krueger Smith had neglected his case and failed to adequately communicate with him regarding the status of his matter.

In her initial response to D.S.'s grievance, dated June 11, 2003, Krueger Smith asserted after she was appointed counsel for D.S., she promptly filed a motion to withdraw the plea, scheduled it, obtained the writ to get D.S. to court, subpoenaed trial counsel, and appeared for the hearing. Krueger Smith asserted at the time of the hearing, the State informed her that the local State Public Defender's Office had filed a motion to withdraw plea, counsel had testified, and the court had denied the motion. According to Krueger Smith, it was agreed she would order a transcript of that hearing, send it to D.S., and then if he wished to proceed to appeal the denial of that motion, Krueger Smith would do so. Krueger Smith also asserted she requested an extension of time from the Court of Appeals to permit the review.

Krueger Smith asserted that after she received the transcript, she reviewed it and sent it to D.S. with her opinion that an appeal would be fruitless. Krueger Smith stated that the post office returned the package for insufficient postage, and it was re-sent with proper postage. Krueger Smith acknowledged that after D.S. did not reply, she should have followed up to find out why, but in the press of business she did not do so. Krueger Smith stated that later when D.S. wrote to her, she put the letter aside and was going to reply to D.S., but never did.

According to Krueger Smith, D.S. subsequently wrote the Public Defender's Office, and they requested that she contact D.S. Krueger Smith acknowledged she was very busy with trial level cases and did not reply promptly. Krueger Smith asserted it was apparent that D.S. wanted to appeal the denial of the motion, and she attempted to obtain an additional extension from the Court of Appeals, which was denied. Krueger Smith returned the entire file to the Public

Defender's Office after she was asked to do so, and apparently successor counsel was appointed for D.S.

By letter dated December 11, 2003, sent by both regular and certified mail, OLR staff requested additional information from Krueger Smith and requested that she submit her written response within 14 days.

Krueger Smith failed to respond to OLR's December 11, 2003 letter.

On January 16, 2004, Krueger Smith was personally served with a letter from OLR dated January 14, 2004, requesting that Krueger Smith provide a response to the questions contained OLR's December 11, 2003 correspondence together with a copy of her file for D.S.

Krueger Smith failed to respond to OLR's January 14, 2004 letter.

By Order dated October 19, 2004, the Wisconsin Supreme Court suspended the license of Krueger Smith for her willful failure to cooperate with the investigation of three matters, including the grievance filed by D.S.

On October 25, 2004, OLR received correspondence dated October 22, 2004 from Krueger Smith responding to the questions contained in OLR's December 11, 2003 correspondence and provided a copy of her file to OLR.

Upon receipt of Krueger Smith's October 22, 2004 correspondence, OLR notified the Wisconsin Supreme Court that Krueger Smith was then cooperating with OLR in the investigation of D.S.'s grievance in order for OLR to continue its investigation.

By Order dated November 17, 2004, the Wisconsin Supreme Court reinstated Krueger Smith's license to practice law in Wisconsin.

In failing to follow through with post-conviction motions or otherwise file an appeal in D.S.'s matter, Krueger Smith failed to act with reasonable diligence and promptness in representing a client, contrary to SCR 20:1.3.

In failing to respond to numerous letters received from D.S. and various follow-up letters from the Public Defender's Office inquiring as to the status of D.S.'s legal matter, Krueger Smith failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, contrary to SCR 20:1.4(a).

In failing to discuss potential appellate issues and strategies available to D.S. so that he could make an informed decision regarding his appeal, Krueger Smith failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, contrary to SCR 20:1.4(b).

In failing to fully and fairly disclose all of the facts and circumstances pertaining to the alleged conduct and in failing to fully respond to additional questions concerning D.S.'s grievance, Krueger Smith failed to cooperate with the investigation of D.S.'s grievance, in violation of SCR 21.15(4), which provides, "Every attorney shall cooperate with the office of lawyer regulation in the investigation, prosecution and disposition of grievances, complaints filed with or by the director, and petitions for reinstatement. An attorney's wilful failure to cooperate with the office of lawyer regulation constitutes violation of the rules of professional conduct for attorneys;" and in violation of SCR 22.03(6), which states, "In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance." Both SCR 21.15(4) and 22.03(6) are enforceable under the Rules of Professional Conduct via SCR

20:8.4(f), which states in relevant part, “It is professional misconduct for a lawyer to...violate a...supreme court rule...regulating the conduct of lawyers.”

GRIEVANCE TWO

On or about April 29, 2002, Krueger Smith was appointed by the Public Defender’s Office to represent K.S. on his appeal of a conviction in Outagamie County. K.S. was initially incarcerated at the Green Bay Correctional Institution.

In January, 2003, K.S. filed a grievance with OLR asserting that after Krueger Smith was appointed, she contacted him by mail on or about June 5, 2002. K.S. alleged that following that initial contact, he wrote to Krueger Smith, but never received a response from her. K.S. alleged he had his grandmother call Krueger Smith in December, 2002, and Krueger Smith indicated she would come to visit K.S. in prison, but she never did. K.S. alleged that Krueger Smith never communicated with him and neglected to follow up on his case.

By letter dated March 25, 2003, OLR staff notified Krueger Smith of K.S.’s grievance and requested that she provide a written response by no later than April 18, 2003. Krueger Smith did not provide a response to OLR.

By letter dated April 30, 2003, sent by both regular and certified mail, OLR again requested that Krueger Smith provide a response to K.S.’s grievance by no later than May 10, 2003.

Krueger Smith still did not provide a written response to K.S.’s grievance to OLR.

On May 23, 2003, Krueger Smith was personally served with a letter dated May 22, 2003 together with enclosures from OLR requesting her written response to K.S.’s grievance by no later than June 16, 2003.

On June 16, 2003, OLR received Krueger Smith's response to K.S.'s grievance. According to Krueger Smith, she was appointed to represent K.S. on May 31, 2002 and on June 4, 2002, she wrote to K.S., to trial counsel, and to the Outagamie County Clerk of Court to request the file. Krueger Smith asserted that in late June, 2002, K.S. called her to discuss his matter and she and K.S. discussed the fact that he had entered into a plea agreement whereby he admitted to the charge of party to the crime of armed robbery (with an enhancer for concealing identity) while a bail jumping charge was dismissed. As to sentencing, the agreement contemplated that the State would cap its recommendation at 6 years of incarceration, with 10 years of extended supervision. According to Krueger Smith, they discussed the fact that when a case was resolved by a plea agreement, often the only route available was to move to withdraw the plea and reinstate the original charges and proceed to a trial if the motion to withdraw plea was granted.

Krueger Smith asserted K.S. was initially in favor of moving to re-open the plea, since he claimed he had been "railroaded" by his first attorney into accepting the agreement when, in fact, he did not commit the crime because he had left the scene. Krueger Smith indicated that K.S. was also aware that both co-defendants had already pled to the charge and implicated K.S. in the entirety of the crime and both defendants could be subpoenaed to testify against K.S. if the matter were reopened. Krueger Smith also informed K.S. that although Wisconsin law was clear that a court could not increase a sentence following withdrawal of a plea and subsequent loss of a trial, the court could impose a different, and possibly greater sentence if it could point to legitimate information indicating that a different sentence was appropriate. According to Krueger Smith, K.S. insisted he wanted to attempt to proceed with a postconviction motion only

if he could not “get more” in the end. Krueger Smith asserted she made it clear to K.S. that she could not promise anything.

Krueger Smith asserted that based on her conversation with K.S., and his insistence that he did not want to run the risk of “getting any more time,” she did not file the motion to withdraw plea. Krueger Smith stated in retrospect she should have followed up her conversation with K.S. with a confirming letter, but since he had been so clear, she did not see the need, particularly since K.S. was being moved around at that point due to another pending matter. Krueger Smith asserted she may have received a telephone call from someone representing herself as K.S.’s grandmother, although she did not remember the call.

By letter dated July 7, 2003, K.S. asserted that some of what Krueger Smith relayed in her initial response was true, but not everything. K.S. specifically disputed Krueger Smith’s contention that the two discussed the case by telephone after Krueger Smith received a letter from K.S. dated June 25, 2002. K.S. asserted he had also requested that Krueger Smith attempt to get a new judge appointed if his case were re-opened.

Upon reviewing the evidence bearing on whether K.S. and Krueger Smith discussed by telephone the merits of post-conviction and/or appellate efforts, OLR, pointing to the events listed below, determined that such a discussion did not occur:

a. Krueger Smith’s first contact with K.S. was by letter dated June 4, 2002, in which Krueger Smith introduced herself and pointed out that she did not yet have either the transcripts or the trial court file.

b. Also on June 4, 2002, Krueger Smith wrote to trial-level counsel, seeking his “insights into the case and [his] assessment as to the best (if any) appellate issues.” Krueger Smith also requested discovery materials and any transcripts then in the possession of trial counsel. Krueger Smith has not stated what, if anything she received from trial-level counsel, or how anything received from trial counsel shaped her views regarding the viability of any appellate issues.

c. Also on June 4, 2002, Krueger Smith wrote to the Outagamie County Clerk of Circuit Court and requested a copy of “the entire court record” in K.S.’s matter. Krueger Smith has not stated when she received a response to her request, nor has she described the content of the Clerk of Circuit Court’s response.

d. On June 25, 2002, K.S. wrote to Krueger Smith, asking to “set up an appointment.” K.S. then devoted two pages to “[t]he reasons I would like this appeal...”

e. Krueger Smith asserts that even though no meeting or telephone conference had been scheduled, and even though she had not yet responded to K.S.’s June 25, 2002 letter in any way, K.S. initiated telephone contact with her from prison on an unspecified date and engaged in discussions with Krueger Smith for which she has produced no notes.

f. Although she cannot specify the date of the purported telephone call, she has produced no notes, and she states that the call likely lasted 15 minutes or less, Krueger Smith states that she sufficiently explained the pros and cons of an appeal such that at K.S.’s direction, she closed the file, and K.S. was “so clear” in his direction that she did not see the need to follow up with a letter confirming the content of their purported discussion.

g. In addition to there being no evidence of any written confirmation with the client as to the closure of the file, no evidence has been produced to date to indicate that Krueger Smith provided notice of the file closure (contemporaneous or otherwise) to the Office of State Public Defender, trial counsel, or the Outagamie County Clerk of Circuit Court.

h. K.S. denies that he initiated from his prison a telephone conference with Krueger Smith during which he directed her to abandon appellate efforts. In fact, K.S. alleges he heard nothing from Krueger Smith subsequent to her June 5, 2002 letter of introduction, so he wrote her again on or about November 1, 2002, and again heard nothing. K.S. further alleges that his grandmother called Krueger Smith in December, 2002, at which time Krueger Smith promised a prison visit but did not follow through.

i. In his grievance, K.S. stated a desire to “find out what’s going on with my lawyer so I can go on with my appeal.”

By letter dated December 11, 2003, sent by both regular and certified mail, OLR staff requested that Krueger Smith provide additional information relating to her representation of K.S.

Krueger Smith failed to respond to OLR's December 11, 2003 correspondence.

On January 16, 2004, Krueger Smith was personally served with a letter dated January 14, 2004 with enclosures requesting that she provide a written response to the questions contained in OLR's December 11, 2003 correspondence by no later than January 28, 2004.

No supplemental response was received from Krueger Smith.

By Order dated October 19, 2004, the Wisconsin Supreme Court temporarily suspended Krueger Smith's license to practice law in Wisconsin, effective the date of the order.

By letter dated October 22, 2004, Krueger Smith provided the supplemental information relating to the K.S. grievance. Krueger Smith asserted she did not recall the exact date of her telephone conversation with K.S. but made handwritten notes of their 15 minute conversation which she had intended to transcribe, but never did. Krueger Smith acknowledged she did not confirm by letter that she would not be filing the motion to withdraw plea or that she would be closing her file. Krueger Smith also indicated she did not notify the Public Defender's Office that she would not be taking any post-conviction action on K.S.'s case. Krueger Smith did not submit a bill to the Public Defender's office requesting payment. Krueger Smith asserted because she did not keep notes regarding the date of K.S.'s call, and since her factual review and research did not take long and did not produce any tangible benefit to the client, she closed the case as "pro bono" without itemization and without requesting payment.

Upon receipt of Krueger Smith's October 22, 2004 correspondence, OLR notified the Wisconsin Supreme Court that Krueger Smith was then cooperating with OLR in the investigation of K.S.'s grievance.

By Order dated November 17, 2004, the Wisconsin Supreme Court reinstated Krueger Smith's license to practice law in Wisconsin since Krueger Smith was cooperating with OLR's investigation of K.S.'s grievance.

By failing to advance post-conviction motions or an appeal on K.S.'s behalf, or in the alternative, by failing to formally close out the file with a no-merit report or any other proper notice to the client, courts and State Public Defender, Krueger Smith violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

Subsequent to her introductory letter to K.S. dated June 4, 2002, by failing to affirmatively inform K.S. of case status and by failing to reply to his inquiries regarding case status, Krueger Smith violated SCR 20:1.4(a), which states, "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

By failing to have any communication with K.S. subsequent to her June 4, 2002 introductory letter, Krueger Smith failed to allow K.S. to make any informed decision concerning appellate efforts, such that Krueger Smith violated SCR 20:1.4(b), which states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

In failing to fully and fairly disclose all of the facts and circumstances pertaining to the alleged conduct and in failing to fully respond to additional questions concerning K.S.'s grievance, Krueger Smith failed to cooperate with the investigation of K.S.'s grievance, in violation of SCR 21.15(4), which provides, "Every attorney shall cooperate with the office of lawyer regulation in the investigation, prosecution and disposition of grievances, complaints filed with or by the director, and petitions for reinstatement. An attorney's wilful failure to

cooperate with the office of lawyer regulation constitutes violation of the rules of professional conduct for attorneys;" and in violation of SCR 22.03(6), which states, "In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance." Both SCR 21.15(4) and 22.03(6) are enforceable under the Rules of Professional Conduct via SCR 20:8.4(f), which states in relevant part, "It is professional misconduct for a lawyer to...violate a...supreme court rule...regulating the conduct of lawyers."

GRIEVANCE THREE

By letter dated March 2, 2004, the Attorney Manager for the Office of the State Public Defender (SPD attorney manager) filed a grievance with OLR regarding the conduct of Krueger Smith and her representation of R.T. Krueger Smith had been appointed on May 28, 2002 by the Public Defender's Office to represent R.T. in post-conviction proceedings and/or appeals in three Brown County cases.

The SPD attorney manager asserted that in April of 2003, he received a letter from R.T. stating that Krueger Smith had stopped taking his calls and responding to his letters regarding his cases. On April 17, 2003, the SPD attorney manager wrote to Krueger Smith and asked her to respond to the concerns raised in R.T.'s letter.

Krueger Smith did not contact R.T., nor did she respond to the SPD attorney manager's April 17, 2003 letter.

On August 7, 2003, the SPD attorney manager again wrote Krueger Smith asking her to respond to his letter. The SPD attorney manager copied R.T. on his letter to Krueger Smith. R.T. immediately notified the SPD attorney manager that he had not heard from Krueger Smith.

By letter dated August 12, 2003, the SPD attorney manager forwarded R.T.'s letter to Krueger Smith, and asked her to respond to R.T.'s concerns.

After hearing nothing from Krueger Smith, on October 28, 2003, the SPD attorney manager sent a follow-up letter to Krueger Smith asking for a response and reminding her of her duties under the Supreme Court Rules.

On November 5, 2003, the SPD attorney manager received another letter from R.T. indicating that he still had not heard from Krueger Smith.

On November 11, 2003, the SPD attorney manager reached Krueger Smith by telephone. According to the SPD attorney manager, Krueger Smith stated she did not remember anything about R.T.'s case and that the file was in Marinette. Krueger Smith indicated she would retrieve the file and get back to the SPD attorney manager.

For the next month or so, Krueger Smith did not contact the SPD attorney manager.

On December 8, 2003, the SPD attorney manager sent out another letter to Krueger Smith reminding her of their earlier conversation in November, 2003 and requested an immediate response from Krueger Smith.

Krueger Smith did not reply to the SPD attorney manager's December 8, 2003 correspondence.

On February 19, 2004, the SPD attorney manager called Krueger Smith. Krueger Smith again informed the SPD attorney manager that she did not have the file with her, but thought she had sent in a response to the SPD attorney manager. Krueger Smith asserted she would review the file and try to have something faxed to him by the following day. The SPD attorney manager indicated he would wait one more week for her response, but if none was received, he would be turning the matter over to OLR.

The SPD attorney manager received no further response from Krueger Smith and filed this grievance with OLR. The SPD attorney manager alleged that Krueger Smith had not pursued any post-conviction proceedings on behalf of R.T. and also alleged Krueger Smith had failed to contact him or to respond to R.T.'s inquiries concerning his case.

By letter dated April 13, 2004, OLR notified Krueger Smith of the grievance and requested that she submit a written response by no later than May 5, 2004.

After receiving no response, Krueger Smith was personally served with a follow-up letter from OLR dated May 20, 2004, requesting that her response to the grievance be postmarked no later than June 14, 2004.

By letter dated June 7, 2004, Krueger Smith responded to the grievance. Krueger Smith acknowledged that the SPD attorney manager had contacted her as he had indicated, but she did not respond to him in writing. Krueger Smith asserted she did obtain and review the files and transcripts relating to R.T.'s cases and wrote to R.T. regarding his options. Krueger Smith asserted that she did not receive a response to her letter other than the SPD attorney manager's letter, and she should have contacted R.T. in response to the SPD attorney manager's communications. Krueger Smith asserted she intended to reply, but her file, which was not then easily kept at hand did not show any responses. Krueger Smith indicated she has since moved all files into her office and instituted a "one-day response" policy with regard to all client communications.

The record does not support Krueger Smith's contention that she ever described to R.T. the options available to him or relayed to him her conclusions regarding the viability of any such options. The record indicates that Krueger Smith communicated with R.T. twice. On May 31,

2002 Krueger Smith sent a letter of introduction to R.T. upon her appointment as his appellate counsel. On June 30, 2002, Krueger Smith wrote to R.T., stating in total:

In reviewing the court file and transcripts on these matters, a question arose which I could not answer from the materials that I have. I was hoping that you could give me a quick answer. At one point in an otherwise very thorough plea proceeding, Judge Dietz made reference to "...a recommendation at sentencing that you are aware of." I can find nothing more in my materials regarding any possible state sentencing recommendation. My question is, I hope, a simple one: Did the State in fact make a sentencing recommendation of any kind, and, if so, what was it?

Thank you for your help in this matter.

On July 2, 2004, Krueger Smith was personally served with a letter from OLR dated June 29, 2004, requesting additional information. The June 29, 2004 letter requested that Krueger Smith provide her supplemental response to OLR by no later July 16, 2004.

Krueger Smith did not provide a supplemental response to OLR.

By Order dated September 19, 2004, the Wisconsin Supreme Court temporarily suspended Krueger Smith's license to practice law for her failure to cooperate with three investigations, including this matter, effective the date of the order.

By letter dated October 22, 2004, Krueger Smith submitted her supplemental response to OLR's June 29, 2004 correspondence. Krueger Smith asserted that she knew the answers she was then submitting were late, but she was a solo practitioner and she did her own typing, and works long hours. According to Krueger Smith she had started to respond promptly, but when she was called away by other work, she did not get back to her responses to finish them or mail them. Krueger Smith indicated that despite this grievance, she had tried to be prompt, efficient, and responsive to her clients and kept putting their work first and telling herself that she would finish them tomorrow. Krueger Smith asserted, however, she kept putting off the work as well

as her response to OLR, and that is no explanation and a poor excuse. Krueger Smith also submitted a copy of her file relating to R.T.'s matter.

Krueger Smith asserted she kept client files at her home in a cabinet approximately 34 miles from the office and things got "lost in translation" between her office and home. Krueger Smith stated she has since rectified the problem by keeping the original files in her office and a duplicate file at home for all appeals. Krueger Smith asserted the "one day response" policy referred to includes contacts both in writing and by phone. According to Krueger Smith this was a goal because sometimes it was not physically possible to do this because of numerous court appearances, including jury trials.

With regard to R.T., Krueger Smith asserted his case involved a plea agreement and a review of the transcripts revealed a thorough plea-taking proceeding. The only possibility of an issue seemed to arise from a statement by Judge Dietz referring to "...a recommendation at sentencing that you are aware of." Krueger Smith indicated this led to two possible issues: breach by the State of a plea agreement or a failure to advise R.T. that the court was not bound by any sentence recommendation made by any party. This prompted Krueger Smith to send her June 30, 2002 letters to R.T. and to trial counsel. Krueger Smith eventually spoke to trial counsel, but learned nothing useful. Krueger Smith stated that R.T. did not respond right away, so she wrote him a second letter and asserted the information provided by R.T. was unhelpful and left no viable issues. Again, the record does not support Krueger Smith's contention that she ever relayed to R.T. her conclusions regarding the viability of potential appellate issues.

In a letter to OLR staff dated December 7, 2004, the SPD attorney manager summarized Krueger Smith's failings in R.T.'s case as follows:

The materials provided to me do not demonstrate that Ms. Smith has complied with accepted standards of practice and appellate rules, as summarized

in *State v. Thornton*, 2002 WI APP 294, 259 Wis. 2d 157, 656 N.W.2d 45 and *State ex rel. Ford v. Holm*, 2004 WI APP 22, 269 Wis. 2d 810, 676 N.W.2d 500. There is no indication in the materials that she informed [R.T.] of his options at the point at which she concluded there was no merit to further proceedings, nor did she file a no-merit report with the court of appeals. In light of these failures, the Office of the State Public Defender will appoint successor counsel to provide further representation to [R.T.] in these matters.

A review of the materials provided to OLR staff by Krueger Smith did not disclose any communications with R.T. following her June 30, 2002 correspondence to R.T., even though R.T. sent follow-up correspondence to Krueger Smith dated November 5, 2002 inquiring as to the status of his case. There is also no indication that Krueger Smith ever informed R.T. of his options after Krueger Smith had concluded there was no merit to further proceedings, nor did she file a no-merit report with the court of appeals. On or about December 7, 2002, the Public Defender's Office appointed successor counsel for R.T.

Following receipt of Krueger Smith's supplemental response in October, 2004, OLR notified the Wisconsin Supreme Court that Krueger Smith was then cooperating with the investigation of R.T.'s grievance.

On November 17, 2004, Krueger Smith's license to practice law was reinstated by the Wisconsin Supreme Court.

In failing to pursue any post-conviction or appellate measures on R.T.'s behalf, or in the alternative, to file a no-merit report with the court of appeals in R.T.'s case, Krueger Smith failed to act with reasonable diligence and promptness in representing a client, in violation of SCR 20:1.3.

In failing after June 30, 2002, to respond to R.T.'s telephone calls and correspondence inquiring as to the status of his case, Krueger Smith failed to keep a client reasonably informed

about the status of a matter and promptly comply with reasonable requests for information, in violation of SCR 20:1.4(a).

In failing to fully and fairly disclose all of the facts and circumstances pertaining to the alleged conduct and in failing to fully respond to additional questions concerning the SPD attorney manager's grievance, Krueger Smith failed to cooperate with OLR's investigation, in violation of SCR 21.15(4), which provides, "Every attorney shall cooperate with the office of lawyer regulation in the investigation, prosecution and disposition of grievances, complaints filed with or by the director, and petitions for reinstatement. An attorney's wilful failure to cooperate with the office of lawyer regulation constitutes violation of the rules of professional conduct for attorneys;" and in violation of SCR 22.03(6), which states, "In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance." Both SCR 21.15(4) and 22.03(6) are enforceable under the Rules of Professional Conduct via SCR 20:8.4(f), which states in relevant part, "It is professional misconduct for a lawyer to...violate a...supreme court rule...regulating the conduct of lawyers."

In accordance with SCR 22.09(3), Attorney Jane Krueger Smith is hereby publicly reprimanded.

Dated this 29th day of March, 2006.

SUPREME COURT OF WISCONSIN

/s/
Konrad T. Tuchscherer